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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,153	10/27/2006	Ralf Dunkel	CS-8779/BCS033006	2200
34469	7590	09/28/2009	EXAMINER	
BAYER CROPSCIENCE LP			SZNAIDMAN, MARCOS L	
Patent Department				
2 T.W. ALEXANDER DRIVE			ART UNIT	
RESEARCH TRIANGLE PARK, NC 27709			PAPER NUMBER	
			1612	
			NOTIFICATION DATE	
			DELIVERY MODE	
			09/28/2009	
			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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rebecca.hayes@bayercropscience.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,153	<b>Applicant(s)</b> DUNKEL ET AL.	
	<b>Examiner</b> MARCOS SZNAIDMAN	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-14, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 12 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This office action is in response to applicant's reply filed on July 31, 2009.

#### *Status of Claims*

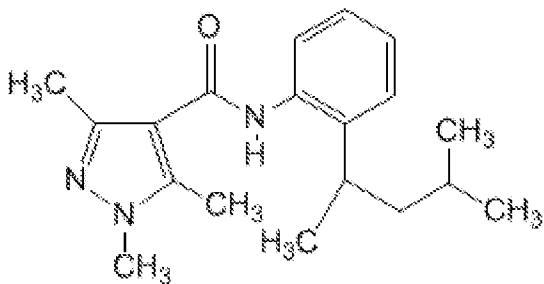
Amendment of claims 11-12 and cancellation of claim 15 is acknowledged

Claims 11-14, and 17-18 are currently pending and are the subject of this office action.

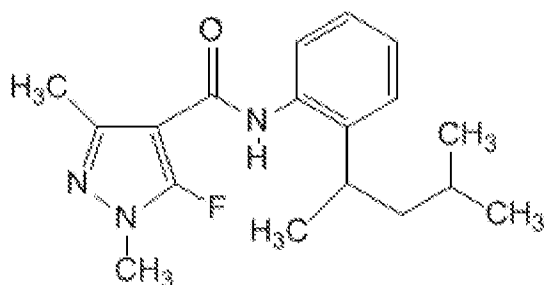
Claims 13-14 and 18 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 14, 2008.

Claims 11-12 and 17 are presently under examination.

Applicant elected the following species in the reply filed on 07/14/08:

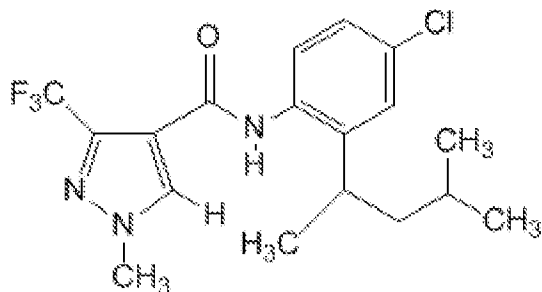


In the Office Action mailed on 10/29/08, the elected species was found free of prior art, so the examination was expanded to the following species: N-[2-(1,3-dimethylbutyl)phenyl]-5-fluoro-1,3-dimethyl-1H-pyrazole-4-carboxamide (CAS# 494793-67-8):



The same species was used in the Office Action mailed on 04/24/09.

Due to Applicant's amendment of the claims in the reply filed on 07/31/09, the above species no longer reads on the instant claims. So the examination was expanded to the following species: N-[4-Chloro-2-(1,3-dimethylbutyl)phenyl]-1-methyl-3-(trifluoromethyl)-1H-pyrazole-4-carboxamide (CAS# 203448-85-5):



Which is currently under examination.

### ***Priority***

The present application is a 371 of PCT/EP04/11394 filed on 10/12/2004, and claims priority to foreign application GERMANY 10349502.9 filed on 10/23/2003.

***Rejections and/or Objections and Response to Arguments***

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated (Maintained Rejections and/or Objections) or newly applied (New Rejections and/or Objections, Necessitated by Amendment or New Rejections and/or Objections not Necessitated by Amendment). They constitute the complete set presently being applied to the instant application.

***Claim Rejections - 35 USC § 102 (new Rejection Necessitated by Amendment)***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

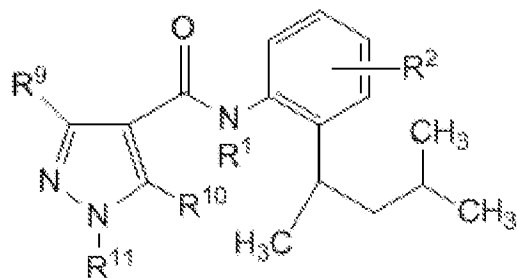
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-12 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshikawa (US 5,914,344).

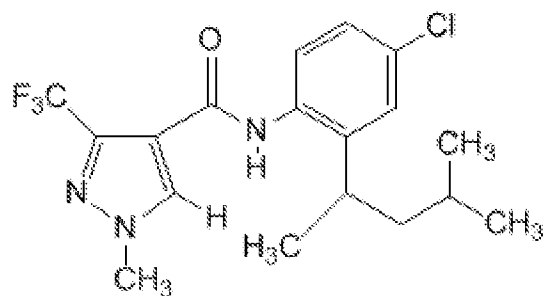
Claims 11 and 12 recite a compound of general formula I:

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For claims 11 and 12, Yoshikawa teaches the following compound:

N-[4-Chloro-2-(1,3-dimethylbutyl)phenyl]-1-methyl-3-(trifluoromethyl)-1H-pyrazole-4-carboxamide (CAS# 203448-85-5):



(See column 18, lines 30-57).

This compound anticipates the structures of general formula I above for the following reasons:

R1 is Hydrogen, R2 is Chlorine, R9 is Trifluoromethyl (i.e. C1-C4-haloalkyl), R10 is Hydrogen and R11 is Methyl (i.e. C1-C4-alkyl).

Since R1 and R2 are not simultaneously Hydrogen (R2 is Chlorine) then R9 can represent trifluoromethyl, and since R1 is not (C1-C6-alkyl)-carbonyl, (C1-C6-alkoxy)-carbonyl, etc, R9 can represent trifluoromethyl.

Claim 17 further limits claim 11, wherein the compound of formula I is in a composition comprising one or more extenders and/or surfactants.

For claim 17, Yoshikawa further teaches that the compounds of the invention are plant disease control agents (see column 1, lines 8-13) which can be used in formulations that comprise adjuvants (i.e. surfactants) like the ones listed in column 16, lines 13-28 and other nonionic surface active agents

### ***Withdrawn Rejections and/or Objections***

#### ***Claims rejected under 35 USC 103 (a)***

Due to Applicant's amendments of the claims, the 103 (a) rejection is now moot.

Rejection under 35 USC 103(a) is withdrawn.

### ***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCOS SZNAIDMAN whose telephone number is (571)270-3498. The examiner can normally be reached on Monday through Thursday 8 AM to 6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MARCOS SZNAIDMAN/  
Examiner, Art Unit 1612  
September 15, 2009

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612